

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

**FILED**

SEP 16 2013

Clerk, U.S. District Court  
District Of Montana  
Billings

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BENJAMIN BROOKS,

Defendant.

CR-02-79-BLG-DWM

ORDER ADOPTING  
FINDINGS AND  
RECOMMENDATIONS OF  
U.S. MAGISTRATE JUDGE

On August 27 , 2013, United States Magistrate Judge Carolyn S. Ostby entered Findings and Recommendation with respect to the August 5, 2013 petition for revocation of Brooks's supervised release. Docs. 117 & 128. Also pending before Judge Ostby was a motion by the United States requesting that Brooks' alleged violation be considered a Grade C violation under the sentencing guidelines. Doc. 124.

Although the parties were notified of their right to file objections to the Findings and Recommendations within 14 days, neither party did so. Failure to object waives the right to review. Fed.R.Crim.P. 59(b)(2). But consistent with

this Court's "full authority" to review the Findings and Recommendations under any standard it deems appropriate, *Thomas v. Arn*, 474 U.S. 140, 154 (1985) this Court reviews for clear error. Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

With respect to the motion of the United States, Judge Ostby confirmed that Brooks had no objection to the motion. She recommends it be granted and that the violation be considered a Grade C violation under the U.S. Sentencing Guidelines.

As to the petition for revocation, Brooks admitted to Judge Ostby that he violated the Preamble to the Standard Conditions by testing positive for methamphetamine. Based on this admission, and upon consideration of the relevant factors, Judge Ostby recommends Brooks's supervised release be revoked and that this Court enter the proposed Judgment sentencing him 7 months imprisonment with 46 months supervised release.

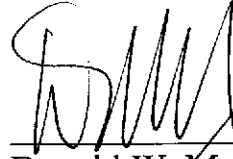
I find no clear error in Judge Ostby's Findings and Recommendation (doc. 128) and I adopt them in full.

Accordingly, IT IS ORDERED that the motion of the United States (doc. 124) to declare the violation in this case to be a Grade C violation is GRANTED.

IT IS FURTHER ORDERED that Benjamin Brooks's supervised release is

revoked. Judgment will be entered by separate document.

Dated this 16<sup>th</sup> day of September, 2013.

A handwritten signature in black ink, appearing to read 'DMolloy', written over a horizontal line.

Donald W. Molloy, District Judge  
United States District Court